

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

DAVID EARL PHILLIPS	§	
v.	§	CIVIL ACTION NO. 9:07cv112
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner David Earl Phillips, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The original petition filed by Phillips challenged a number of prison disciplinary actions, and the present petition, challenging disciplinary case no. 20060263082, was severed out of the original. On May 11, 2007, Phillips was ordered to pay the habeas corpus filing fee of \$5.00 or to file an application for leave to proceed *in forma pauperis*, accompanied by a certified inmate trust account data sheet. On June 27, 2007, Phillips filed an application for leave to proceed *in forma pauperis*, but did not include the data sheet. He was again ordered to correct this deficiency on August 13, 2007, but did not comply.

On October 9, 2007, the Magistrate Judge issued a Report recommending that the above-styled application for the writ of habeas corpus be dismissed without prejudice for failure to prosecute or to obey an order of the Court. A copy of this Report was sent to Phillips at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and

recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **30** day of **November, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge